VISVALINGAM MANIKKAM

v.

SEE MOON KEE

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[CIVIL SUIT NO. P 702 OF 1981]

DAMAGES: *Plaintiff a bulldozer driver - Earning RM350 per month - Overtime pay between RM400 and RM500 per month - Reduced overtime pay after accident - Services terminated - Pretrial loss of earnings, partial loss of earnings and future loss of earning capacity.*

The plaintiff was on the date of the accident a bulldozer driver earning RM350 per month with overtime pay of between RM400 and RM500 per month. As a result of the accident, the plaintiff suffered permanent injuries in the form of restricted dorsiflexion of the right wrist, shortened left lower limb, restricted flexion of the left knee and wasted left thigh.

The accident took place on 21 February 1980. The plaintiff could not work up to October 1980, but was paid 2 months' wages. From the time he went back to work till July 1984, his overtime pay was reduced to RM200 per month due to the permanent injuries. But his fixed salary remained at RM350. In July 1984, his services were terminated. The Court took it that the defence Counsel was satisfied with these figures as no challenge was made against the plaintiff's evidence.

Held:

[1] The plaintiff was awarded damages as follows:

(i) pretrial loss of earnings for 6 months - 6 x RM750 = RM4,500

(ii) partial loss of earnings from October 1980 to July 1984 - 45 months at RM250 per month = RM11,250

(iii) future reduced earning capacity - 2/3 of 18 years of useful life (12 years) at RM250 per month per actuary table = RM26,500

[2] The plaintiff was also awarded 3% interest on pretrial loss of earnings and partial loss of earnings from date of accident to date of trial.

[Appeal dismissed.]

JUDGMENT

Eusoff Chin J:

The appeal is only against the award made on pretrial loss of earnings and future loss of earning capacity.

The evidence shows that the plaintiff was on the date of accident 21 February 1980 a bulldozer driver with J.G. Container. He first joined J.G. Container in 1970 and on the date of accident was earning RM350 per month, with overtime pay of between RM400 to RM500 per month.

As a result of the accident the plaintiff had suffered fracture of the lower end of his left femur, comminuted fractures of the left tibia and fibula and fracture of lower end of the right radius. The specialist report at pp. 3 & 4 of Agreed Bundle of Documents states -

Present complaints

He complained of

(1) Restricted flexion at the left knee

(2) Limping

(3) Pain in the right wrist on lifting anything heavy.

On examination

The fracture of the lower end of the right radius had united. Dorsiflexion of the wrist was limited to 50º compared to 80º at the left wrist.

He walked with a limp because of restricted movements at the left knee and shortening of the left leg.

The left thigh was wasted, its girth being 1" smaller than the right.

The left lower limb was ¾" shorter than the right.

The left knee was slightly swollen. Flexion at the knee was limited to 45º compared to 150º at the right knee. There was some swelling of the left leg and bony thickening of the upper part of the tibia where the fracture of the tibia had united.

X-rays of the right wrist showed a fracture of the lower end of the radius which had united with slight deformity of the joint surface.

X-rays of the left femur showed a united fracture of the lower shaft of the femur.

X-rays of the left knee showed fractures of the upper ends of the tibia and fibula. The fracture of the tibia was comminuted and involved the joint surface. It has united with slight medial tilting of the lower fragments.

Opinion

The restriction of dorsiflexion at the right wrist, the shortening of the left lower limb, the severe restriction of flexion at the left knee and wasting of the left thigh resulted from his injuries. They are likely to be permanent.

His disabilities cause a limp and incapacitate him from work except of a sedentary nature.

Osteoarthritis is likely to develop as a result of the injuries in the right wrist and especially the left knee in later years.

After the accident the plaintiff could not work up to October 1980, but was paid 2 months' wages. For 6 months during that period, he was not paid any salary. After that he returned to work with his employer J.G. Container. Due to the injuries in his left leg, he could not drive a bulldozer with manual clutch which required the depressing of the clutch pedal to operate the gears. He could only drive a bulldozer which had an automatic clutch. Plaintiff said he could depress the clutch pedal but could not control his left leg to slowly release the clutch pedal. He was paid salary of RM350 per month but as he could not work long hours his overtime was reduced to RM200 per month. This continued up to July 1984 when his employer transferred him to another job, that of stacking boxes containing bottles. The company he worked for manufactured bottles. After working for 3 days, the plaintiff found his leg could not take the strain. His services were terminated. Since he was educated up to Standard VI in a Tamil School, and could not type and had no qualification in Bahasa Malaysia, he can only do manual work.

The defendant did not dispute that the plaintiff was a bulldozer driver, nor disputed the earnings of the plaintiff. The defence Counsel only challenged the plaintiff to call his former employer to Court to give evidence. It was submitted by the Counsel for the plaintiff that the defence Counsel had written to and had then received from the plaintiff's former employer a letter concerning the earnings of the plaintiff. This the defence Counsel had not denied. However the defence Counsel had not challenged or put to the plaintiff what his (plaintiff's) actual earnings were though the defence Counsel was in possession of the letter written to him (defence Counsel) by the plaintiff's former employer. I would therefore take it that the defence Counsel was satisfied with the monthly earnings received by the plaintiff as alleged by him in his evidence. I therefore accept the evidence by the plaintiff that at the time of the accident, he was earning an average of RM750 per month. Based on this monthly earnings, I had awarded to the plaintiff as pretrial loss of earnings for six months after the date of accident to be 6 x RM750 = RM4,500.

The plaintiff had then returned to work with his employer up to July 1984, but due to the injuries to his left leg he could not work overtime hours as long as he could prior the date of accident. This had resulted in his loss in overtime pay which on the evidence I had estimated to be RM250 per month. For this partial loss of earnings for the next 45 months up to July 1984, I awarded the plaintiff 45 x RM250 = RM11,250.

I would include the period after that in computing the future reduced earning capacity of the plaintiff. He was 37 years of age on the date of trial. If he lives up to 55 years of age, there would be 18 years of useful life. But I would reduce the period by 1/3 giving a multiplier of 12 years, at RM250 per month. Using the actuary table, this gives a figure of RM26,500.

The pretrial loss of income and partial loss of income totalling RM15,750 would carry 3% interest from date of accident to date of trial.

Also found at [1985] 2 CLJ 283